



Case Number:	Miscellaneous Civil Application 5 of 2008
Date Delivered:	10 Dec 2009
Case Class:	Civil
Court:	High Court at Kisii
Case Action:	Ruling
Judge:	Daniel Kiio Musinga
Citation:	ABEL ODAGO ONYANGO v RONGO LAND DISPUTES TRIBUNAL & another [2009] eKLR
Advocates:	-
Case Summary:	<b>[Ruling] - Judicial Review</b> -certiorari-jurisdiction- jurisdiction of the Land Disputes Tribunal – dispute on ownership of land- whether the tribunal had jurisdiction to entertain the matter- Land Disputes Tribunal Act No. 18 of 1990 section 3(1)
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**OF KISII**

**Miscellaneous Civil Application 5 of 2008**

**IN THE MATTER OF AN APPLICATION BY EBEL ODAGO ONYANGO FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**AND**

**IN THE MATTER OF RONGO LAND DISPUTES TRIBUNALS**

**AND**

**IN THE MATTER OF RESIDENT MAGISTRATE'S COURT AT RONGO**

**BETWEEN**

**ABEL ODAGO ONYANGO ..... APPLICANT**

**VERSUS**

**PAUL ODERA OKODE ..... INTERESTED PARTY/RESPONDENT**

**AND**

**RONGO LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**THE RESIDENT MAGISTRATE'S COURT,**

**RONGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The ex-parte applicant prayed for an order of Certiorari to remove into this court for purpose of quashing the decision of the 1<sup>st</sup> respondent that was delivered on/or about 10<sup>th</sup> August, 2006. The 1<sup>st</sup> respondent awarded the applicants parcel of land, **L.R. No. Kamagambo/Kanyimach/787**, hereinafter referred to as the “**the suit land**” or a portion thereof to the interested party herein, Paul Odera Okode. The applicant also prayed for an order of Prohibition directed against the 2<sup>nd</sup> respondent prohibiting her from hearing, determining and/or enforcing the decision of the 1<sup>st</sup> respondent.

The application was made on the grounds that:

**The 1<sup>st</sup> respondent acted in excess of its jurisdiction in awarding the suit land to the interested party.**

- **The decision of the 1<sup>st</sup> respondent was *ultra vires* the mandatory provisions of section 6 of the Land Control Act.**
  
- **The 1<sup>st</sup> respondent acted *ultra vires* its jurisdiction as set out under section 3 (1) of the Land Disputes Tribunal Act.**
  - **That the 1<sup>st</sup> respondent dealt with a matter that was pending before the High Court at Kisii.**

The ex-parte applicant, in his affidavit in support of the application, deposed that he is the registered proprietor of the suit land. Sometimes in the year 2006, the interested party commenced proceedings against the applicant claiming the suit land or a portion thereof. The 1<sup>st</sup> respondent awarded the whole of the suit land to the interested party.

It is clear that the 1<sup>st</sup> respondent exceeded its jurisdiction as donated to it by the provisions of **section 3 (1) of the Land Disputes Tribunals Act**. In making the aforesaid decision, the Tribunal was in effect nullifying the applicant's title deed and the tribunal had no power to do so.

It is also clear that at the time of giving the said award there was a case pending before this court in relation to the suit land, the same being **HCCC No. 3 of 2000**.

None of the respondents herein opposed the aforesaid application. I am satisfied that the orders sought by the ex-parte applicant are merited and I grant the same. The 1<sup>st</sup> respondent shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 10<sup>TH</sup> DAY OF DECEMBER, 2009.**

**D. MUSINGA**

**JUDGE.**

**10/12/2009**

Before D. Musinga, J.

Mobisa – cc

Mr. Mboya for the Applicant

N/A for the Respondent

**Court:** Ruling delivered in open court on 10<sup>th</sup> December, 2009.

**D. MUSINGA**

**JUDGE.**



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